REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application.

35 U.S.C. § 112

Claims 14-20 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended claim 14 to clarify that the term "soundtracks" in line 7 of claim 14 refers to "created soundtracks" stored in the memory. Applicant respectfully submits that the amendment to claim 14 overcomes the rejection under 35 U.S.C. §112.

As such, Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. §112.

35 U.S.C. § 103

Claims 1-20 and 45-51 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,309,301 to Sano (hereinafter "Sano") in view of U.S. Patent No. 6,393,430 to Van Ryzin (hereinafter "Van Ryzin").

Sano discloses:

> A game communication system enhancing and improving clarity of players perception of a game. The game communication system includes gaming machine units connected to each other through communication modules which are adapted to perform a communication procedure within the game communication system. Each of the gaming machine units includes communication units adapted to execute the communication

procedure to ensure bi-directional communications among the gaming machine units, a performance unit performing a sound track for a corresponding gaming machine unit, and a synchronization data setting unit setting a synchronization data which is used to control operation timing of the performance unit. (Sano Abstract).

Sano fails to disclose or suggest selecting audio tracks and creating a soundtrack containing the selected audio tracks. The Office Action agrees that Sano does not disclose creating a soundtrack. (See Office Action, page 3, paragraph 4a).

Van Ryzin discloses:

A method and system for the creation of a custom playlist of various audio/visual tracks that are to be automatically recorded to a storage medium is disclosed. The user communicates with personal computer (PC) software by means of a graphical user interface (GUI). The GUI allows the user to create a custom playlist and to signal the intent that a recording of that custom playlist to a storage medium be made. Once the user has indicated the custom playlist is to be recorded, the software automatically records the custom playlist with no further user interaction required. In this manner, a minimum amount of user interaction is required. (Van Ryzin Abstract).

Van Ryzin is directed toward recording music files on a hard disk drive of a personal computer. The title of Van Ryzin states "Method and system for automatically recording music data files by using the hard drive of a personal computer as an intermediate storage medium". Thus, a reader of Van Ryzin would clearly understand that the disclosure of Van Ryzin is directed at a personal computer. The Van Ryzin reference fails to mention a game console, a game system, or a game application.

lee●hayes pllc   509-324-9256   9   Application No. 09/802,661

Claim 1 of the present application recites:

A game console, comprising:
a memory;
a processor coupled to the memory; and
a console application stored in the memory and executable on the processor, the console application configured to allow selection of a plurality of stored audio tracks and further configured to create a soundtrack containing the selected audio tracks.

Thus, claim 1 recites a game console that includes a console application that allows selection of multiple audio tracks and further allows creation of a soundtrack containing the selected audio tracks. As mentioned above, the Sano reference fails to disclose or suggest selecting audio tracks and creating a soundtrack containing the selected audio tracks.

Additionally, Applicant submits that Van Ryzin is not analogous prior art. MPEP 2141.01(a) states, "To rely on a reference under 35 U.S.C. 103, it must be analogous prior art." The Van Ryzin reference is not analogous prior art because the reference is unrelated to a game console or a gaming system, as recited in claim 1. Van Ryzin fails to make any reference to a game, game hardware, or game software. Further, the personal computer system disclosed in Van Ryzin is significantly different than a game console, as recited in claim 1. For example, a game console was traditionally a closed environment that did not allow modification or customization. Further, game consoles were traditionally limited to a specific set of functions that relate to one or more games. Existing game consoles were capable of playing pre-recorded sounds stored within a game application or a game cartridge. Since these existing game consoles did not lend

themselves to customization, there was no thought of creating a soundtrack on a game console.

In contrast, a personal computer has been an open system that allows modification and customization. For example, personal computers are modified by adding or changing hardware components, adding software programs, reconfiguring hardware and software, and the like. Additionally, a personal computer is typically a general purpose device capable of executing a variety of different application programs that perform a variety of different functions. Thus, a person working with a game console capable of performing a specific set of game-related functions would not have considered a reference related to a general purpose device, such as a personal computer.

For at least these reasons, Applicant submits that Van Ryzin is not analogous prior art. Accordingly, Applicant submits that it is inappropriate for the Office Action to rely on Van Ryzin in rejecting claim 1 under 35 U.S.C. 103. As such, Applicant respectfully submits that claim 1 is allowable over Sano. Given that claims 2-13 and 45 depend from claim 1, Applicant respectfully submits that those claims are likewise allowable over Sano for at least the reasons discussed above.

Claim 14, as amended, recites:

> A game console, comprising:
> a memory; and
> a processor coupled to the memory, the processor being configured to present a first user interface to facilitate selection of stored audio tracks used to create a soundtrack containing the selected audio tracks, the processor further configured to present a second user interface to facilitate playback of created soundtracks stored in the memory.

As discussed above with respect to claim 1, Sano fails to disclose or suggest selecting audio tracks to create a soundtrack containing the selected audio tracks. Further, Van Ryzin is not analogous prior art and, accordingly, cannot be relied upon in rejecting claim 14 under 35 U.S.C. 103.

Therefore, Applicant respectfully submits that claim 14 is allowable over Sano. Given that claims 15-20 depend from claim 14, Applicant respectfully submits that those claims are likewise allowable over Sano for at least the reasons discussed above.

Claim 46 of the present application recites:

A method comprising:
identifying a plurality of stored audio tracks accessible by a game console;
displaying at least a portion of the plurality of stored audio tracks to a user;
receiving information regarding audio tracks selected by the user; and
creating a soundtrack containing the audio tracks selected by the user.

As discussed above with respect to claim 1, Sano fails to disclose or suggest displaying multiple audio tracks and creating a soundtrack containing selected audio tracks. Further, Van Ryzin is not analogous prior art and, accordingly, cannot be relied upon in rejecting claim 46 under 35 U.S.C. 103.

Therefore, Applicant respectfully submits that claim 46 is allowable over Sano. Given that claims 47-51 depend from claim 46, Applicant respectfully submits that those claims are likewise allowable over Sano for at least the reasons discussed above.

Conclusion

Claims 1-20 and 45-51 are in condition for allowance. Applicant respectfully requests reconsideration and issuance of the subject application. Should any matter in this case remain unresolved, the undersigned attorney respectfully requests a telephone conference with the Examiner to resolve any such outstanding matter.

Respectfully Submitted,

Date: _11-05-04_   By: _____
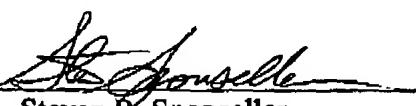
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